

November 21, 2001

VIA HAND DELIVERY

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Established
1849

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166457



Various NJDEP Recipients

November 21, 2001

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Re: **REQUEST FOR FORMAL DISPUTE RESOLUTION**
UNDER OVERSIGHT REGULATIONS, N.J.A.C. 7:26C-1.4

Tidewater Baling Corp. Administrative Consent Order
26 St. Charles Street
Newark City, New Jersey 07112
Essex County
Contaminated Site List No. NJD011534708

Dear Ladies and Gentlemen:

This law firm represents Tidewater Baling Corporation ("TWB"), which operates a scrap metal and crushing facility located at 26 St. Charles Street, Newark, Essex County, New Jersey 07112 ("TWB Site").

REQUEST FOR FORMAL DISPUTE RESOLUTION

Please accept this letter and its attachments in support of the application by TWB invoking the New Jersey Department of Environmental Protection's ("NJDEP") formal dispute resolution process, as provided at N.J.A.C. 7:26C-1.4 of the regulations governing Oversight of the Remediation of Contaminated Sites ("Oversight Regulations"), N.J.A.C. 7:26C-1 et seq. The relief requested consists essentially of three items:

- **Reversal of Transfer to Publicly Funded Remediation Status.** TWB seeks a reversal of the NJDEP's November 1, 2001 Letter from Ronald T. Corcoran, Assistant Director, Division of Responsible Party Cleanup, to Richard A. Levao, Esq. of Drinker, Biddle & Shanley LLP, and Peter Ficuciello of Brennan Environmental, Inc. ("BEI") terminating the March 16, 1992 Administrative Consent Order ("ACO")¹ for the TWB Site and transferring oversight for the TWB Site from the Bureau of Fund Management, Compliance & Recovery ("BFMCR") and/or the Bureau of Case Management ("BCM") in the Division of Responsible Party Cleanup to the NJDEP's Division of Publicly Funded

¹ The November 1, 2001 letter is in slightly error in referencing the March 16, 1992 ACO. In fact, that ACO was superceded by an amended ACO finally signed by all parties on October 7, 1992. Despite this amendment, the terms of the March 16, 1992 ACO remained substantially the same.

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Remediation, Bureau of Site Management ("BSM"). (Exhibit A). This letter was received by TWB's representatives no earlier than November 5, 2001; therefore, the within application is timely. The stated ground for this action was TWB's alleged failure to implement a Remedial Action Workplan ("RAW") submitted by TWB and approved by the NJDEP in 1995 (See collective Exhibit B).

- **Change in Approved Remedy.** TWB seeks approval of a proposed change to the remedy contained in the 1995 approved RAW by which soils previously scheduled for excavation and off-site disposal at the TWB Site would now be left in place with implementation of previously approved institutional and engineering controls to function as the control mechanism. No other material differences with the 1995 approved RAW are proposed by TWB. The main reasons for this proposed change are that: (1) due to economic constraints on TWB which have been well documented and fully explained to the NJDEP, TWB is without sufficient assets to implement the remedy as fully approved in the 1995 RAW; and (2) due to changes since 1995 in NJDEP remediation policy as reflected by the NJDEP's 1997 and later revisions to the regulatory Technical Requirements for Site Remediation ("TRSR"), which were adopted in response to statutory mandates contained in Senate Bill S1070, also known as the Industrial Site Recovery Act, the excavation and off-site disposal of soils remedy contained in the 1995 RAW is no longer the necessary or preferred remedy for soils contamination at a location like the TWB Site.
- **Stay of All Aspects of November 1, 2001 Letter Pending Completion of Dispute Resolution Process.** Until such time as the within application for formal dispute resolution has been fully resolved, including all potential dispositions by those supervisory persons and all internal appeals as called for by N.J.A.C. 7:26C-1.4, and including final resolution of the matter by the NJDEP Commissioner (if necessary), TWB also seeks a stay of all aspects of the November 1, 2001 letter, including but not limited to: (1) a stay of the transfer of the TWB Site to the publicly funded remediation program; (2) a stay of the NJDEP's decision to begin publicly funded remediation of the TWB Site; and (3) a stay of the NJDEP's request, contained in that letter, that TWB must execute a Site Access Agreement to allow NJDEP's publicly funded work to begin. If, as TWB asserts, termination of the TWB Site's responsible party cleanup status is unwarranted and unnecessary, then a stay of all such items would be necessary and appropriate considering that the NJDEP's failure to grant such a stay would moot the very relief sought by TWB in making the within application for formal dispute resolution in accordance with the NJDEP's Oversight Regulations.

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Please note that this application for formal dispute resolution under the NJDEP's Oversight Regulations is being forwarded to multiple NJDEP personnel in view of the somewhat unusual procedural posture of this matter. Simply put, TWB is unsure from the record exactly which NJDEP person or persons should receive the within application to initiate the process under N.J.A.C. 7:26C-1.4. Consequently, this letter and its attachments are addressed to multiple recipients with the request that the proper recipient of this application initiate the formal dispute resolution process called for by the regulation and or, if that person has not yet been identified by TWB, transmit same to the proper recipient.

Finally, please note that, simultaneous to submission of this application, TWB is also forwarding a request to Richard J. McManus, Esq., of the NJDEP's Office of Dispute Resolution requesting alternative dispute resolution of these issues, i.e., mediation. TWB believes that mediation is actually a better approach and more likely to lead to a mutually satisfactory resolution of the within issues than the formal process under N.J.A.C. 7:26C-1.4. However, TWB understands that acceptance of this matter by the Office of Dispute Resolution is a discretionary decision and, therefore, the possibility exists that it would not be accepted for mediation.² Should mediation be granted by that Office, TWB would be willing to suspend the N.J.A.C. 7:26C-1.4 process for so long as it may take to complete a mediation of these issues. Nevertheless, it would still be necessary for TWB to be granted an interim stay of the November 1, 2001 letter pending completion of such mediation, and TWB hereby requests that as alternative relief should the Office of Dispute Resolution grant its separate request for mediation.

REGULATORILY REQUIRED INFORMATION

Pursuant to N.J.A.C. 7:26C-1.4 (b), the following specific information is provided in support of this application:

1. The site name, address and contaminated site list number is as follows:
 - Tidewater Baling Corporation
 - 26 St. Charles Street
 - Newark City, New Jersey
 - Essex County

² For this reason, the within N.J.A.C. 7:26C-1.4 application is being initiated primarily as a prophylactic measure to ensure that there will be at least some resolution of these issues in the event mediation by the Office of Dispute Resolution is not granted.

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Contaminated Site List No. NJD011534708

2. The name of the case manager overseeing the remediation of the site is as follows:

Prior to November 1, 2001, the case manager was Kathleen Rogacki of the BFMCR. In addition, Ms. Rogacki's supervisor, Mark Pedersen, Section Chief of the BFMCR, has also had direct involvement. Furthermore, Vicky Galofre of the BCM has also apparently had some involvement. All of these persons are within the NJDEP's Division of Responsible Party Cleanup. Subsequent to November 1, 2001, the matter has apparently been transferred for site management to Thomas Cozzi, who is located in the BSM of the Division of Publicly Funded Site Remediation. It is unclear to TWB whether, and if so to what extent, Mr. Cozzi has had involvement with the TWP Site since the matter was transferred to him. However, it is believed that Ms. Rogacki has continued to have some involvement with the TWP Site even after the transfer.

3. The name, address and telephone number of the person making the request is as follows:

This request is made on behalf of TWB by its attorneys, Drinker, Biddle & Shanley LLP. All further communications regarding this request should be sent to the following:

Marty M. Judge, Esq.
Drinker, Biddle & Shanley, LLP
105 College Road East
P.O. 627
Princeton, New Jersey 08540-0627
Tel. 609-716-6544
Fax 609-799-7000

With a carbon copy to:

Richard A. Levao, Esq.
Drinker, Biddle & Shanley, LLP
500 Campus Drive
Florham Park, New Jersey 07932-1047
Tel. 973-549-7250
Fax 973-360-9831

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4. The following summarizes the issues not resolved and includes a brief discussion of why the NJDEP's decision to date is not appropriate.

The unresolved issues are the three issues described in the first section of this letter – that is: (i) a request for reversal of the November 1, 2001 transfer of the TWB Site to publicly funded remediation status; (ii) a request for a change in the approved remedy at the TWB Site; and (iii) a request for a stay of all aspects of the November 1, 2001 letter pending final resolution of the issues raised by this request for formal dispute resolution.

Simply stated, transfer of the matter to the publicly funded remediation program is unnecessary and counter-productive because TWB remains ready, willing and able to complete a responsible party cleanup of the TWB Site. Subjecting the cleanup to public funding is an unwise decision because it would likely delay the cleanup even further than it has already been delayed and would use public money that might otherwise be available for true "orphan" sites to remediate a site where a responsible party in fact desires to complete the cleanup.

However, TWB has encountered difficulties in obtaining a funding source for the cleanup that could not have been anticipated when it entered into the ACO in 1992 or even when it submitted its RAW in 1995 for NJDEP approval. A protracted dispute between TWB and its insurance carrier, which commenced in or about 1995, was only finally resolved in 2000. This has largely been the reason for the delays in completion of this remediation to date. Provided that a suitable but non-objectionable change to the approved RAW remedy can be implemented by TWB, as indicated below, there should be no reason why TWB could not now complete the remediation of the TWB Site in a timely and acceptable fashion. TWB wishes to have opportunity to do so.

Regarding the remedy, the particular remedy which TWB proposed to the NJDEP in 1995 – soils excavation and off-site disposal, coupled with implementation of institutional and engineering controls – is no longer the necessary or preferred remedy for soils contamination at a location like the TWB Site because of changes in NJDEP remediation policy as reflected by the NJDEP's 1997 and later revisions to the regulatory TRSR, which were adopted in response to statutory mandates contained in Senate Bill S1070, later known as the Industrial Site Recovery Act. Unlike the

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controlling standards under which TWB was compelled to submit its RAW to the NJDEP in 1995, which substantially favored if not required adoption of a so-called permanent remedy, the current TRSR standards no longer require such permanency. Rather than engaging in very expensive soils excavation and off-site disposal, as the 1995 remedy would have mandated, TWB believes that current TRSR standards would now support leaving the impacted soils in place at the site and addressing them *in situ* using only appropriate institutional and engineering controls. Attached as Exhibit C is a letter dated November 13, 2001 from TWB's environmental consultants, BEI, more fully explaining the rationale for this proposed change in the remedy.

Finally, TWB wishes to note that it believes the NJDEP would agree with this revised remedial approach if this site did not already have in place an approved RAW that is no longer timely or seemingly appropriate. During a meeting on February 15, 2001 among TWB and NJDEP representatives, TWB advised the NJDEP that it had a potential purchaser who was interested in acquiring the property but who was disinclined to remove and dispose of soils off-site because leaving them in place with appropriate institutional and engineering controls would be just as environmentally protective as the 1995 approved remedy and would, furthermore, be consistent with current cleanup standards. In that meeting, the NJDEP indicated, albeit informally, that such a change in the approved RAW would be acceptable if implemented by TWB's purchaser, subject to certain conditions not now relevant to discuss. Ultimately, however, the deal with the potential purchaser did not come to fruition for reasons unrelated to the present application. As BEI indicates in its November 13 correspondence, there is no technical reason why a remedy suitable for a purchaser of the property should not also be suitable for the seller.

For all of these reasons, TWB believes and asserts that failure to transfer this matter back to the responsible party cleanup program from the publicly funded program and failure to allow it opportunity to complete the cleanup using current TRSR remediation standards, as now proposed by BEI, would be little more than a punitive gesture designed to punish TWB for past delays in the site remediation that were largely outside of its control. More importantly, failure to grant such relief would actually do nothing to complete the cleanup of the TWB Site in a thorough and timely manner, would involve the NJDEP in an unnecessary site remediation, and would divert money from more deserving and necessary publicly funded sites to one for which such expense is not warranted. For all of these

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reasons, TWB respectfully asks the NJEP to grant its application for formal dispute resolution and to grant it the relief requested herein.

5. The following are TWB's recommendations for resolution of the unresolved issues:

TWB recommends and requests that the NJDEP take the following actions with respect to the unresolved issues: (i) reverse the November 1, 2001 transfer of the TWB Site to publicly funded remediation status and restore the site to the responsible party cleanup program so that TWB will be free to complete the cleanup set forth in the 1995 approved RAW, as modified below; (ii) authorize a change in the approved remedy at the TWB Site by which soils previously scheduled for excavation and off-site disposal would now be left in place with implementation of previously approved institutional and engineering controls to function as the control mechanism; and (iii) grant TWB's request for a stay of all aspects of the November 1, 2001 letter pending final resolution of this formal dispute resolution process.

6. The following describes previous efforts to resolve the issues:

Previous efforts to resolve the issues have been summarized and are described in the background discussion set forth under paragraph 4 above.

7. The following is TWB's position as to whether a meeting with the NJDEP should take place:

A meeting with the NJDEP is requested and is believed to be appropriate and desirable. TWB requests such a meeting to occur irrespective of whether this matter may be accepted for mediation under the program sponsored by the NJDEP's Office of Dispute Resolution.

Various NJDEP Recipients

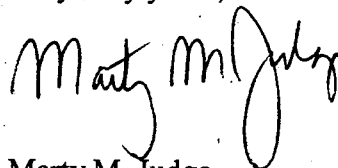
November 21, 2001

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CONCLUSION

Please feel free to contact me if you have any questions or desire any additional information. I look forward to discussing this matter with whomever may be the appropriate person to act as NJDEP's liaison under the N.J.A.C. 7:26C-1.4 at this juncture.

Very truly yours,



Marty M. Judge

Encl.

Cc/encl.: Mr. Alan Shapiro, Tidewater Baling
Richard A. Levao, Esq., Drinker, Biddle & Shanley, LLP
John M. Brennan/ Peter Ficuciello, Brennan Environmental, Inc.
Richard J. McManus, Esq., Office of Dispute Resolution, NJDEP



State of New Jersey

DONALD T. DiFRANCESCO
Acting Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

Bureau of Fund Management, Compliance & Recovery
401 East State Street
PO Box 028
Trenton, NJ 08625-0028

NOV 1 2001

Certified MailReturn Receipt Requested

7000 1670 0013 7792 9436

Richard A. Levao, Esq.
Drinker, Biddle & Shanley, LLP
900 Campus Drive
Florham Park, NJ 07932-1047

7000 1670 0013 7792 9429

Peter Ficuciello
Brennan Environmental, Inc.
8 Great Meadow Lane
East Hanover, NJ 07936-1703

RE: Tidewater Baling Corp. Administrative Consent Order
26 St. Charles Place
Newark City, Essex County

Dear Mr. Levao:

I am writing to advise you of the Department's decision to terminate the March 16, 1992, Administrative Consent Order for the Tidewater Baling Site in Newark ("the Site"). As you know, the Department was prepared to conduct the remediation of this Site when Tidewater Baling Corporation ("Tidewater Baling") agreed to conduct the remediation pursuant to the Administrative Consent Order. Remediation of this Site was necessary due to the unacceptable risks of human exposure to hazardous substances discharged at the Site, including heavy metals and PCBs.

Although Tidewater Baling had agreed to remediate the Site, Tidewater has failed to implement the Remedial Action Workplan (hereinafter known as the "Workplan") that the Department approved in 1995. During that period, the Department has issued Tidewater Baling a series of deficiency letters, including notification that Tidewater Baling's continued noncompliance with the Administrative Consent Order could result in the Department taking administrative enforcement action and terminating the Administrative Consent Order. On September 20, 1999, the Department issued a Demand for Stipulated Penalties in the amount of \$50,000 in an effort to encourage Tidewater Baling to implement the

Workplan. Tidewater Baling's subsequent delivery of an incomplete and inadequate implementation schedule was grossly insufficient to satisfy the Department's requirements.

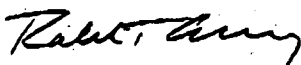
In addition, by letter dated January 12, 2001 (see attached), the Department advised Tidewater Baling that it had decided to conduct the remediation itself. As memorialized by its letter of February 21, 2001 (see attached), the Department subsequently met with Tidewater Baling and was persuaded to allow Tidewater Baling to proceed with the remediation under the Administrative Consent Order, provided that Tidewater implement the Workplan by March 15, 2001. Yet again, Tidewater Baling failed to fulfill its obligations to remediate the hazardous discharges at the Site.

As a result, the Department has decided to terminate the Administrative Consent Order. In Paragraph 82 of the March 16, 1992 Administrative Consent Order Tidewater Baling agreed that should Tidewater Baling violate the terms of the March 16, 1992 Administrative Consent Order or fails to meet its requirements of that Administrative Consent Order, the Department will unilaterally terminate the March 16, 1992 Administrative Consent Order. Therefore, the Department, subject to the following paragraph, hereby terminates the March 16, 1992 Administrative Consent Order with Tidewater Baling for the remediation of the Site.

Furthermore, since the Department has terminated the March 16, 1992 Administrative Consent Order and the Department will conduct all remaining remedial activities that Tidewater Baling has failed to perform, specifically, implementing the Workplan, at the Site, Tidewater Baling shall sign the enclosed Site Access Agreement and return it to the Department within fifteen (15) days after receipt of this letter. Please note that since the case has been transferred to the Division of Publicly Funded Site Remediation, Bureau of Site Management, Tidewater Baling may participate in the required remediation of the Tidewater Baling Site by paying all or part of the cost of the remediation as provided by N.J.A.C. 7:26C-5.5(d). Any partial payment by Tidewater Baling will mitigate, but will not satisfy, the liability of Tidewater Baling for the Department's cleanup and removal costs, statutory penalties and treble damages.

Should you have any further questions regarding this matter, please contact Kathleen Rogacki of my staff at (609) 292-7253. Should you have any questions regarding the Department's remediation of the Site, please contact Thomas Cozzi of the Department's Division of Publicly Funded Site Remediation, Bureau of Site Management at (609) 633-0764.

Sincerely,



Ronald T. Corcoran, Assistant Director
Responsible Party Cleanup Element



State of New Jersey

DONALD T. DiFRANCESCO
Acting Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner of

STATE OF NEW JERSEY Department of Environmental Protection Site Remediation Program SITE ACCESS AGREEMENT

Tidewater Baling Corp. [hereinafter, "the Property Owner"] hereby grants permission to the State of New Jersey and/or its contactor(s) [hereinafter "the State"] to enter upon certain property known as Block 2487, Lot 2, in the State of New Jersey County of Essex [hereinafter "the Property"] for the following purposes (check every item as appropriate):

1. To drill - test well(s), - boring(s) or - probe hole(s) to remove samples of the and/or consolidated geologic formation(s);
2. To geophysically or otherwise log the well(s) or boring(s);
3. To conduct hydrologic testing on the well(s);
4. To install, operate and maintain, upon the premises - monitoring well(s), - observation well(s), boring(s), - probe hole(s), - piezometer(s) or - water level recorder(s) to be operated by the State until such time as the State deems it no longer necessary to do so;
5. To conduct a land survey, recover boundary markers or locate property corners;
6. To conduct a surface geophysical investigation;
7. To seal - test well(s), - observation well(s), - monitoring well(s), - boring(s), - probe hole(s) or piezometer(s);
8. Locations for monitoring well(s), observation well(s), boring(s), probe hole(s), or piezometer(s) will be determined by the State.
9. Other _____

(To be continued on Page 2)

The State, for itself, its successors and assigns, agrees to indemnify the Property Owner, (its, his, her, their) heirs, successors and assigns, from any and all liability, claims, damages and actions which may result from the negligent use or occupancy of the Property by the State, subject to the following exceptions: 1) The State shall have no obligation to indemnify or hold harmless the Property Owner, (its, his, her, their) heirs, successors or assigns, or any of them, for any claims or damages for which the State would have no liability under the New Jersey Tort Claims Act (N.J.S.A. 59:1 et seq.) and the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.); 2) The liability, if any, of the State shall be subject to the availability of State of New Jersey's funds; and, 3) The agreement of the State to indemnify, as set forth in this paragraph, shall not apply to any claims, actions or damages which may arise out of, be occasioned by or result from any condition existing on, or which did exist on, the Property at the time of the execution of this agreement, or at any time prior to the execution of this agreement.

In return for granting the rights of access and maintenance set forth hereinabove, the Property Owner acknowledges that (it, he, she, they) has received the following good and sufficient consideration.:

- a. The State will make available to the Property Owner the analyses of any samples taken from the well, boring, or
- b. The State agrees to return the Property to the general condition which existed prior to its use or occupancy by the

c. Any well, boring, probe hole or piezometer which is installed by the State or its contractors will be closed and sealed by the State in compliance with applicable procedures or rules of the New Jersey Department of Environmental Protection when it is no longer needed.

d. The Property Owner shall, when the well is no longer needed by the State, have, at the discretion of the State, the option of retaining ownership of the well for the Property Owner's private use, with the understanding that all State requirements governing the well's present or intended use, including abandonment, shall become the responsibility of the Property Owner at the time of the transfer.

This agreement shall take effect on the date on which it is signed by both parties.

Ronald T. Corcoran, Assistant Director, RPCE

Date: _____

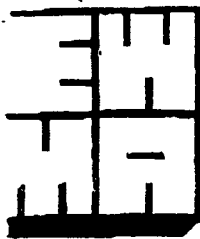
(Print Name and Title)

For the Property Owner

Date: _____

(Print Name and Title)

C: Kathleen Rogacki, Case Manager, BFMCR
Vicky Galofre, Case Manager, BCM
Thomas Cozzi, Site Manager, BSM

**CORPORATE HEADQUARTERS:**

1235A Route 23 South
P.O. Box 648
New Jersey 07474

Phone: 201/633-7900
Fax: 201/633-7482

**ENVIRONMENTAL WASTE
MANAGEMENT ASSOCIATES, INC.****Federal Express Overnight**

February 28, 1995

Alexander Spiezio, Case Manager
NJDEPE/Bureau of Federal Case Management
Division of Responsible Party Site Remediation
401 East State Street
CN 028
Trenton, New Jersey 08625

RECEIVED

MAR - 6 1995

RE: ***Tidewater Baling Corporation***
26 Saint Charles Street
Newark, New Jersey
EWMA Case #92036

Dear Mr. Spiezio:

Please find the enclosed Remedial Action Workplan (RAWP) for the referenced property. No laboratory analytical packages have been included, because all previous laboratory results have been submitted to the NJDEP as part of the RIR and RRIR submittals. All references to laboratory data in this RAWP will be found in these previously submitted volumes.

If you have any questions or require additional information concerning this matter, please call me at our Wayne, New Jersey office.

Sincerely,
Environmental Waste Management Associates, Inc.

Peter Ficuciello, Geologist

cc: Alan Shapiro, Tidewater Baling
Richard A. Levao, Esq., Shanley & Fisher
Chris Langewisch, Senior Project Manager

encl: Three copies and original copy of RAWP

**MIDATLANTIC
REGION:**

Princeton, NJ
Phone: 609/683-7600
Fax: 609/683-1556

WESTERN REGION:

Englewood, CO
Phone: 303/843-9700
Fax: 303/843-9094



REMEDIAL ACTION WORKPLAN

For Property Located at:

26 St. Charles Street
Newark, NJ

Prepared For:

Tidewater Baling
Newark, NJ

February 28, 1995

Submitted by:

Environmental Waste Management Associates, Inc.
P.O. Box 648
Wayne, New Jersey 07474
EWMA Case No. 92036

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Remedial Action Workplan
Tidewater Baling
Newark, NJ
EWMA Job # 92036

Page 1

PART I - REMEDIAL ACTION WORKPLAN

1.0) INTRODUCTION

Environmental Waste Management Associates, Inc. (EWMA) has been retained by Tidewater Baling Corporation (TWB) to draft the following Remedial Action Workplan (RAWP) for the TWB site. The RAWP includes EWMA's proposed plan for remediating previously identified areas of concern to the cleanup criteria set forth by the New Jersey Department of Environmental Protection (NJDEP). TWB is located at 26 St. Charles Street, Newark, Essex County, New Jersey, and is currently operating a scrap metal crushing and baling facility. The site occupies approximately 2.5 acres. The RAWP is based on the summarized findings of the Remedial Investigation previously performed by EWMA (April 4, 1994) and approved by the NJDEP on December 1, 1992. A Revised Remedial Investigation Report was conditionally approved on June 27, 1994.

This document will address the following areas of concern pertaining to the remedial activities proposed for the subject property:

- 1) Remediation of soils contaminated with heavy oils, PCBs, and possibly priority pollutant metals.
- 2) Removal of soil pile located adjacent to the subject property and behind the scoreboard on the Ironbound Stadium property.

1.1) Site Geology

The site is located within the Glaciated Piedmont Physiographic Province of New Jersey. A review of the *Engineering Soil Survey of New Jersey (Report No. 2 - Essex County)* prepared by Rutgers University - New Brunswick, New Jersey, a Joint Highway Research Project of the Bureau of Engineering Research and the New Jersey State Highway Department in cooperation with the Bureau of Public Roads, January, 1951, indicates that the site is overlain by soil mapped as GO 12i which is composed of non-residual materials (stratified drift or more specifically, glacial outwash) deposited by melt-waters during the Wisconsin glaciation. Soils are characterized as assorted and relatively homogenous, predominantly sand-sized grains with varying amounts of silt and gravel.

**Remedial Action Workplan
Tidewater Baling
Newark, NJ
EWMA Job # 92036**

Page 2

Gravel often occurs as layers or beds of varying thickness and extent. The soil type includes silty sands, silty gravels, sand-gravels, and gravelly sands. The Brunswick Formation is the underlying bedrock in this area and is composed of soft red shale with sandstone beds.

The soil type GO 12ig indicates that drainage is imperfect. Estimated depth to the water table is 6 to 10 feet below surface grade. Based on the Engineering Soil Map and the U.S. Geological Survey Map of New Jersey, prior to land reclamation projects, the Newark Bay boundary was approximately half a mile southeast of the site.

The Passaic River is located approximately 2,000 feet north of the site. Topography gently slopes to the southeast generally in the direction of low lying areas leading to Newark Bay.

The soils encountered during EWMA's RI sampling activities are as follows: mostly black fine sand, some silt, some gravel, and fill material from Tidewater's operation was observed from 0 to 4 feet below grade; cobblestones (belgian blocks) were encountered beneath the fill material at varying depths from 1.5 to 4 feet below grade; well graded, and fine to medium sand was observed from 4 to 7 feet below grade; and red-brown clay was observed from 7 to 11 feet below grade. Depth to ground water levels ranged from 3.6 feet in MW-3 to 16.6 feet in MW-2 below grade based on the March 31, 1993 ground water sampling event. Based on the June 23, 1993 ground water sampling event, groundwater levels ranged from 8 feet below grade in MW-3 to 16.9 feet below grade in MW-2.

2.0 SUMMARY OF AREAS OF CONCERN

A summary of the Remedial Investigation findings for the areas of concern which will be addressed in this document are as follows:

- 1) TWB has been performing metal scrapping, crushing, and baling operations on site since the late 1940's. Based on the nature of these operations, various contaminants may have been released to the surface soils on the site, and according to soil analysis results, there is evidence of release.

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2) One operation included the compacting of metal parts in a crusher located on the eastern portion of the property and constructed below ground. Occasional releases of hydraulic oil from this system were pumped up and out of the concrete bunker which housed the crusher, and into a above ground storage tank (AST). The oil is suspected to be PCB containing oil since analysis of samples collected from the floor of this bunker indicated they contained PCB oils. Occasionally after oil and water had separated inside the AST, the oil was then be returned to the hydraulic system and the water discharged onto the uncapped soils of the site around the crusher. TWB also processed (scrapped) transformers on site. Historically, transformers are a known to have contained PCB containing dielectric oils in the past.

3) TWB also stores precrushed and crushed scrap metal on site along the sides of the property. Contaminated liquids stored in the scrap metal were often discharged to the ground surface. The types of metal being scrapped on site included automobiles, storage tanks, and transformers. The facility does not accept metal containers with hazardous materials inside.

4) In order to bale the crushed scrap metal, TWB also transported the crushed metal to a baler on the west side of the property. A permanent elevated crane carried this material across the middle of the property to the baler, potentially discharging any liquids released by the crushing of the metal (i.e. oil tanks, engine blocks, transformer oil containers). The crane is now out of service.

5) In order to determine the quality of the soils at the TWB site, test pits and soil borings were installed over most of the site, and soil samples were obtained from these locations. The sample depth, location and analytical results of these samples are included in tabular form on Figure 1-Remedial Action Location Plan. Analytical results of soil samples indicate that petroleum hydrocarbon concentrations are over the standard of 10,000 ppm in most of the samples obtained from the 0.0 to 3.0' interval. High petroleum hydrocarbon results indicates that oil was spilled on this soil. The laboratory analytical packages from which this data was obtained from were previously attached to the RIR and RRIR submittals to the NJDEP. They are not included here again, because the NJDEP has copies of the laboratory results.

6) The soil pile located behind the scoreboard on the Ironbound Stadium property has been previously identified as an area of concern. As part of this proposed remedial

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action workplan, TWB will remove the soils located in this area and properly dispose of them at an approved soil disposal/recycling facility.

7) Analytical results of ground water sampling activities indicate that ground water has not been impacted by the operations on site, and do not require any remediation.

3.0) TECHNICAL OVERVIEW

The applicable remediation standards at the subject facility will consist of the NJDEP Non-Residential Direct Contact Cleanup standards. The Non-Residential standards will be utilized for the following reasons: 1) the site is a non-residential baling/scrap facility, and residential use is not anticipated in the future; 2) the surrounding area is non-residential, and no sensitive receptors have been identified in the vicinity of the site; 3) the cost to remediate to residential standards would be prohibitive. Based on the results of previous delineation activities as documented in the previously submitted Revised Remedial Investigation Report, the costs would at least triple the cost of the proposed remediation to non-residential standards. The proposed remediation is based upon the known area and depth of contamination, the feasibility of available technologies for remediation of heavy oils possibly with some PCBs in soil, and the case-specific budgetary and space constraints.

3.1) Soil Remediation

EWMA proposes to remediate the subject property by excavating contaminated soils on site and disposing of them at an approved facility. Soils identified in the RIR by test pit and boring activities indicate that approximately 2,000 tons of soil from the area of the test pits will need to be excavated and disposed of at an appropriate facility. EWMA will supervise the excavation of soil by track hoe, and field screen excavated soils with a photoionization detector (PID) calibrated to isopropylene, as well as using field observations and previously delineated sampling results areas to determine contaminated soils.

Post-excavation soil sampling will be performed in accordance with NJAC 7:26E-6.4. Specifically, since this is a surficial spill, one (1) sample will be obtained from the bottom of each side wall for every 30.0 linear feet of side wall as well as one (1) sample from every 900 square feet of bottom area. Excavation bottom samples will be obtained from the 0 to 6" interval below grade, except in the case where the previously noted Belgian

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block is encountered, which has been determined to act as a barrier to contaminant migration. Sample location and depth will be biased towards the highest contamination identified as a result of the remedial investigation. An estimated 45 post excavation soil samples will be obtained to demonstrate that all of the contaminated soils have been excavated. This is an estimate based on the anticipated extent of the excavation in accordance with the previously delineated contaminants. Post excavation soil samples will be analyzed for TPHC and priority pollutant metals (PP metals) since these contaminants were found in concentrations over the NJDEP Soil Cleanup Criteria (last revised February 3, 1994) in test pits and soil borings during the RI phase. Due to the large area proposed to be excavated, the total number of samples may be reduced in accordance with NJAC 7:26E-1.6. However, since the validity of the PCB samples has been questioned by the NJDEP, PCB samples will be obtained in areas suspected to contain PCBs.

All sampling activities will be performed in accordance with the methods set forth in the NJDEP Field Sampling Procedures Manual as well as the Technical Requirements for Site Remediation (NJAC 7:26E et seq.) This includes but is not limited to utilizing dedicated field sampling equipment and transporting samples in Teflon sealed, amber glass jars at 4° Celsius. Certain quality assurance and quality control practices will also be performed during sampling activities in order to provide assurance that sample integrity is not compromised.

3.2) Scoreboard Soil Pile

The soil pile located behind the Ironbound Stadium scoreboard will be removed and disposed of as part of this remedial action workplan. Specifically, a sample obtained from the soil pile has been analyzed for full TCLP waste class identification. The soil will be removed during the removal and disposal activities of excavated soils on the subject property as discussed in 3.1 above. Soils will be disposed of at an approved disposal facility.

3.3) Required Permits

Since a surface area greater than 5,000 square feet will be disturbed, a soil erosion permit may be required. TWB will investigate and file the required plans and applications for a soil erosion permit.

stored scrap metal as well as any temporary soil piles to known uncontaminated areas on site. Therefore, EWMA proposes that a schedule for clearing those areas for a given window of time will be implemented. During these windows of time that an affected area is vacant, EWMA will perform the proposed excavating and post excavation soil sampling. When remediation for the affected area is complete, EWMA will designate the area remediated, and allow TWB to redistribute the scrap metal so that the next treatment area is made vacant.

6.0) REMEDY COST COMPARISON

The proposed method of remediation (soil excavation and disposal off site) will incur an estimated cost of approximately \$250,000.00 to fully remediate the subject property. An approximate breakdown of these costs is as follows:

Soil removal and disposal	\$160,000.00
Post excavation sampling and analysis	\$20,000.00
Backfilling excavation	\$30,000.00
Excavation/Loading	\$12,500.00
<u>Professional Services</u>	<u>\$17,500.00</u>
ESTIMATED TOTAL	\$240,000.00

Due to the nature of the contaminants on site, which consist of heavy oils, possibly PCBs, and metals, there is no technologically and economically feasible alternative to excavating contaminated soils. A soil vapor extraction (SVE) system is effective for treating volatile organic soil contamination, but due to the low volatile nature of heavy oil in soil, as well as the presence of PCBs and metals, the system lacks the ability to sufficiently treat the soils which are found on the subject site. SVE systems require multiple well points, pilot studies, and air and water filtration systems. They also require constant monitoring and maintenance, at a substantial cost to the operator. The initial cost of implementing an SVE system to remediate highly volatile contaminated soils would be greater than \$250,000.00, and such a system would be incapable of effectively remediating the contaminants on site.

Similarly, in-situ bioremediation is generally not effective in treating heavy oils, metals, and PCBs in soils. A trickle down infiltration system with a collector and bioreactor would cost well in excess of \$300,000.00 to design and set up, and would not be able to effectively remediate all of the contaminants encountered at the site. Ex-situ bio-

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remediation while somewhat less expensive, would still not effectively remediate the entire range of contaminants, and is not feasible due to space constraints.

The TWB site is affected by a large surficial spill which extends over a substantial portion of the property, but is limited to 6.0 feet or less in depth. In most areas on site, contamination does not reach below 2.0 to 3.0 feet below grade. All presently known affected areas on site are accessible to earth moving equipment. Therefore this site is proposed to be a candidate for soil excavation, which is the most cost effective option, as well as providing the only feasible permanent remedy.

7.0) SCHEDULE

TWB will schedule remediation activities at the site pending approval from the state of the RAWP. It is estimated that the excavation of soils on site will require one month of scheduling, excavating, and sampling. Soil sample analysis will require three to four weeks for normal turnaround time. Results of soil excavation activities will be included in a Remedial Action Report, which is anticipated to be submitted four months from the receipt of the RAWP approval.

8.0) HEALTH AND SAFETY PLAN:

This Health and Safety Plan has been developed by EWMA for the remedial activities to be conducted at the TWB site. The plan provides procedures for use by all personnel involved to minimize the potential for exposure to chemical contaminants and the potential for accidents from all other hazards that may be encountered. This site specific Health and Safety Plan will be in effect throughout the duration of the project. All personnel on site, regardless of the company they are employed through, are subject to the requirements of this plan.

8.1) Scope of Work

All operations will comply with the requirements of the Occupational Safety and Health Administration (OSHA) Safety and Health Regulations for Construction, 29 CFR 1926 Subpart C, General Safety and Health Provisions, and with the applicable requirements of OSHA Occupational Safety and Health Standards, 29 CFR 1910.

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Work will be conducted in a safe and environmentally acceptable manner, and all personnel shall be required to comply with the health and safety requirements specified herein. All personnel participating in the UST removal and soil removal shall read and familiarize themselves with the contents of this plan and to document this activity through the entry of a signature and date on the attached Health and Safety Plan Review Form. Each person, including subcontractor personnel, must be able to demonstrate that he or she has undergone the appropriate training and medical monitoring and is fit to wear respiratory protection if respiratory protection is required. Copies of the approved Health and Safety Plan shall be maintained on-site during all field activities.

8.2) Site Characterization:

The site is an active ferrous and non-ferrous scrap metal baling facility. Based on previous site and remedial investigation activities, the site is known to have high levels of petroleum hydrocarbons in the exposed soil covering a majority of the property. PCB containing oils are suspected to be found in soils around the baler pit on the east side of the property. The site is an active site and requires that all visiting persons to the site be aware that heavy machinery such as a baler, a crusher, cranes, and tractor trailers are all in use on site.

8.3) Chain of Command:

In case of difficulties on site requiring notification of EWMA, the following are EWMA contacts listed in order of priority.

**Environmental Waste Management Associates
P.O. Box 648, Wayne, New Jersey 07474
(201) 633-7900**

**Chris Langewisch, Senior Project Manager
(201) 633-7900 Extension 28**

The Project Manager provides overall direction for the implementation of field activities in accordance with this plan. He is to monitor operations at the site and assure that work is conducted in a safe manner and the potential for exposures and accidents is minimized. Incident reports and questions are directed to this individual.

Peter Ficuciello, Staff Geologist
(201) 633-7900 Extension 52

The Geologist will perform as the field team leader by ensuring that field work is conducted in accordance with the approved Health and Safety Plan. He is authorized to call off work if adverse weather conditions affect the safety of field personnel. The Geologist is also authorized to direct any person to stop work if safety requirements are not being met. Resumption of work will require concurrence of the Project Manager.

Dr. Richard Greenberg, President EWMA
(201) 633-7900 Extension 15

The chain of command for this project is as follows:

Immediate job coordination problems will be directed to the attention of the project manager or geologist.

Problems relative to health and safety will be directed to the senior project manager or geologist.

Job progress meetings and problems requiring corporate coordination will be directed to Dr. Greenberg.

8.4) Known Hazards and Contaminants:

The following is a list of known contaminants on site:

Contaminant	Matrix
PCBs	soil
Petroleum Hydrocarbons	soil
Metals (As, Cu, Pb, Ni, Zn)	soil

Chemical Exposure

The targeted organic chemicals that are present in the soil at the site consist mainly of petroleum breakdown products.

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* The ambient air monitoring devices used during this project will be calibrated with isobutylene, which shall simulate Benzene.

Physical Hazards

The potential for accidents exists whenever heavy equipment is in operation. Caution must be exercised when operating equipment and moving throughout the site. Any underground utilities must be identified prior to field work and care must be taken to avoid any overhead or underground structures.

8.5) Safety Precautions

Work Area

Work and support areas will be designated based on measured ambient air quality and proposed sampling locations.

Adequate safety instruction will be provided to all personnel on site. Restricted areas due to hazardous environmental conditions will be clearly posted. Care will be taken to insure that all work areas are contained.

Personnel will not be admitted on the site alone. All personnel will visit and work on the site in teams of two or more.

Personal Protective Equipment:

Protective clothing will be worn by all personnel on site. The site safety manager will predetermine the appropriate level of protection for personnel entering the work area.

Contractors will be responsible for providing their personnel with appropriate protective equipment.

Personnel Protection Requirements:

It is anticipated that level D protection will be adequate for the proposed work. Level D protection must be worn when contaminants are known to be within acceptable respiratory limits and there is no hazard from direct skin contact.

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All personnel on site will be equipped with a standard work uniform, alternatively, a supply of Tyvek or Saranex Tyvek suits will be available in the personnel support area on site. In addition, personnel entering the work area must wear appropriate work boots, and disposable Tyvek boot coverings. Any personnel handling soil and or water must be equipped with nitrile gloves.

Personnel working with machinery including but not limited to drilling rigs and earth moving equipment must wear a hard-hat, and hearing protection.

Constant ambient air monitoring will be conducted with a HNU and/or Microtip. Should air contaminants be identified as above acceptable levels (above 5 ppm), personal protection will be upgraded to level C. Level C protection includes all apparel as required in level D protection plus approved full face, air purifying respirators (APR), and chemical resistant clothing and gloves.

Action Levels

All initial site activities will be performed in level D attire. Constant monitoring of ambient conditions will document presence of airborne contaminants. A background air reading will be recorded as a baseline for general environmental conditions.

If the levels detected are less than 5 ppm, level D protection will be continued. If the detectors indicate levels greater than 5 ppm above background conditions, level C protection will be implemented. Alternatively, level D protection may be continued if exposure is limited to less than fifteen minute intervals with at least sixty minutes between exposures.

Site Security

The project supervisor will be responsible for maintaining adequate site security. Access to the site will be at the sole discretion of the site supervisor. Visitors will not be permitted to enter areas of known or suspected contamination.

The project supervisor will be responsible for securing all work areas prior to leaving the site each night. All areas of potential hazard will be fenced, flagged and posted.

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Medical Services:

If a medical emergency occurs, limited first aid is available on site. If advanced medical aid is needed the local first aid squad will be called and transported by ambulance to one of the following hospitals:

Closest Hospital:

St. James Hospital
88th Street, Newark, NJ

Emergency Phone Numbers:

Police and Fire: 911

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CERTIFICATIONS:

A. The following certification shall be signed by the highest ranking individual at the site with overall responsibility for that site or activity. Where there is no individual at the site with overall responsibility for that site or activity, this certification shall be signed by the individual having responsibility for the overall operation of the site or activity.

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information, and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties.

Typed/Printed Name ALAN SHAPIRO Title SEC.

Signature [Signature] Date 3/1/95

Sworn to and Subscribed Before Me

on this 1st

Date of March 19 95

[Signature]
Notary

KRISTINE KRATTIGER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 10, 1997

B. The following certification shall be signed as follows:

1. For a corporation, by a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
3. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official; or
4. For persons other than 1-3 above, by the person with the legal responsibility for the site.

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information, and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute I am personally liable for the penalties.

Typed/Printed Name ALAN SHAPIRO Title SEC.

Signature [Signature] Date 3/1/95

Sworn to and Subscribed Before Me

on this 1st

Date of March 19 95

[Signature]
Notary

KRISTINE KRATTIGER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 10, 1997

Revision No: _____

Revision Date: _____

RCV BY: JUN 5 10 10 01

U.S. DEPT. OF ENVIRONMENTAL PROTECTION

U.S. DEPT. OF ENVIRONMENTAL PROTECTION



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
CommissionerCERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO.Alan Shapiro
Tidewater Baling Corporation
26 Saint Charles Street
Newark, New Jersey 07103

NO.

Chris Langewisch
Environmental Waste Management Associates, Inc.
1235A Route 23 South
P.O. Box 648
Wayne, New Jersey 07474

Gentlemen:

Re: Tidewater Baling Corporation Site (TWS)
Newark City, Essex County

In accordance with the Administrative Consent Order (ACO) executed between TWS and the New Jersey Department of Environmental Protection (Department), the Department has reviewed the document entitled:

Remedial Action Work Plan (RAWP)

submitted on behalf of TWS by Environmental Waste Management Associates (EWMA), dated February 28, 1995. Based on the NJDEP Technical Requirements For Site Remediation, N.J.A.C. 7:26B, the Department has approved the RAWP pending the Department's receipt of a satisfactory response to the following comments:

3.0 Technical Overview

TWS has stated that the cost to remediate the site to residential standards would be "prohibitive". The application of the Department's Non-Residential Direct Contact Soil Cleanup Criteria at the site is acceptable to the Department, provided that TWS satisfies the following conditions:

1. the use of the property must be restricted to nonresidential or other uses compatible with the extent of contamination of the soil; and
2. access to the site be restricted in a manner compatible with the allowable use of the property.

RCN BT JUN 30 10:01

If TWB does not satisfy the above conditions the site must be remediated to the Department's Residential Direct Contact Soil Cleanup Criteria.

TWB must note that the 10,000 ppm cleanup number being proposed for petroleum hydrocarbon contaminated soil is applicable to the Total Organic Contaminant level in soil. Specifically, no individual soil sample shall exceed the 10,000 ppm criteria for Total Organic Contaminants, including all tentatively identified compounds detected during analysis. In addition, the applicable Non-Residential Direct Contact Soil Cleanup Criteria for individual contaminants must first be met before applying the 10,000 ppm cleanup criteria for Total Organic Contaminants.

For information on the most up to date revisions to the Soil Cleanup Criteria refer to the April 1994, Site Remediation News (Volume 06, Number 1).

3.1 Soil Remediation

1. TWB has stated that approximately 2000 tons of soil will be excavated and disposed of at an appropriate facility. TWB must provide specific details on how the 2000 ton figure was derived, including actual dimensions of the areas of concern.
2. TWB must provide a determination on the classification of the contaminated soil and proposed method of disposal. TWB should explore a soil reuse/recycling option if it is determined that the excavated soil is not a New Jersey hazardous waste, (see NJ Hazardous Waste Regulations, NJAC 7:26-1 et seq.). For more information on soil reuse, refer to the attached guidance, "Management of Excavated Soils, May 14, 1993".
3. The RAMP does not address remedial options for PCB contaminated sludges in the Baler buildings. Sludge sample locations NB1 and NB2 contained PCB levels ranging from 47-103 ppm, indicating that the contaminated sludge is a New Jersey hazardous waste and is found in sufficient concentrations as to be subject to the Toxic Substance Control Act PCB Disposal Requirements.

As stated in the Department's February 17, 1993 Remedial Investigation Report comment letter, TWB must propose to resampling the sludge contained in the Old Baler Building for PCB's. If TWB does not wish to conduct this sampling event, sludge contained within the Old Baler Building may be combined and handled with the sludge from the Active Baler building. In either case contaminated sludge from both of the Balers must be removed and disposed of in accordance with applicable waste disposal regulations.

4. TWB proposes approximately 45 post-ex soil samples to be analyzed for TPHG, priority pollutant metals and PCBs. Since the RI sample data revealed exceedences of several Base Neutral compounds, 25% of the post-ex samples must be analyzed for BN+15, (as required by Technical Requirements for Site Remediation). Post-ex sampling and analysis for priority pollutant metals may be reduced to those specific metals that exceeded Non-Residential Soil Cleanup Criteria as reported in the Remedial Investigation, namely; As, Cu, Pb, Ni and Zn.

5. TWB must be prepared to conduct any dewatering activities at the site which are deemed necessary by the Department during the soil excavation activities.

The laboratory data deliverable format must conform with the Technical Requirements for Site Remediation, 7:26E-Appendix A, "II Full Laboratory Data Deliverables Non-USEPA/CLP Methods". These deliverables shall be the "Regulatory Format" as specified in the Technical Requirements. Solid Waste Method (SW-846) 8080 may be utilized for PCB analysis, however the lab must insure that the reported detection limit does not exceed the NJDEP Soil Cleanup Criteria of 0.49 ppm.

3.4 Site Restoration Plans

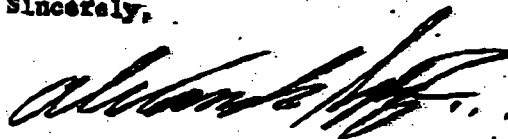
The RAWP states that the soil will be excavated and placed directly onto trucks with no stockpiling taking place on site. TWB's response to this letter must discuss by what means the soil will be classified and whether any classification sampling is necessary prior to off-site disposal.

As per the Department's March 30, 1994 and June 27, 1994 letters, due to the poor quality of past lab data the Department reserves the right to require additional sampling in areas which will not be remediated as part of the proposed Remedial Action.

TWB must notify the Department at least fourteen (14) calendar days prior to beginning any field activities. Please submit the schedule referenced in Paragraph 7.0 of the RAWP to the Department within fourteen calendar days of your receipt of this letter.

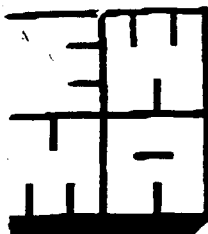
If you should have any further questions contact me at (609)633-1455.

Sincerely,



Alexander Spiazio, Case Manager
Bureau of Federal Case Management

cc: Greg Kappa, BOWPA
John Prendergast, BERRA

**CORPORATE HEADQUARTERS:**

1235A Route 23 South
P.O. Box 648
New Jersey 07474

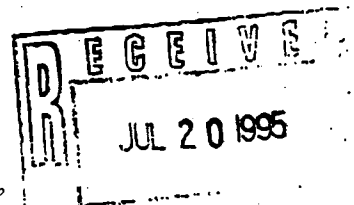
Phone: 201/633-7900
Fax: 201/633-7482

**ENVIRONMENTAL WASTE
MANAGEMENT ASSOCIATES, INC.***R. Lento*

*Fax (609) 777-4285 and
CERTIFIED MAIL 2390 621 547
Return Receipt Requested*

July 19, 1995

Alexander Spiezio, Case Manager
NJDEP/Bureau of Federal Case Management
Division of Responsible Party Site Remediation
401 East State Street
CN 028
Trenton, New Jersey 08625



RE: *Tidewater Baling Corporation*
26 Saint Charles Street
Newark, New Jersey
EWMA Case #92036

Dear Mr. Spiezio:

Regarding the comments contained in the NJDEP correspondence dated May 17, 1995, the following responses are submitted:

3.0 Technical Overview

1., 2. Tidewater Baling (TWB) will propose to restrict the use of the site to be compatible with the contamination, and will also restrict access to the site through the implementation of engineering and/or institutional controls. These restrictions will be addressed via preparation and submittal of a proposed Declaration of Environmental Restriction, subsequent to completion of the remediation activities.

3.1 Soil Remediation

1. The approximate figures for soil tonnage were derived as follows: The square footage of the area of concern was calculated at approximately 11,500 square feet by adding up the various lengths and widths of the areas which were sampled and found to exceed the cleanup standard. An average contaminant depth of 3.5 feet was utilized to obtain a volume of approximately 40,000 cubic feet. Divided by 27 to obtain cubic yards, we get approximately 1,480 cubic yards. Multiply 1,480 by 1.4 tons per cubic yard and we get slightly more than 2,000 tons.

2. Prior to excavation, subsurface soil will be obtained and analyzed for waste classification parameters. Assuming the results will indicate that the soil is not a New Jersey hazardous waste, TWB will likely remove the soil to a recycling facility.

**MIDATLANTIC
REGION:**

Princeton, NJ
Phone: 609/683-7600
Fax: 609/683-4556

WESTERN REGION:

Englewood, CO
Phone: 303/843-9700
Fax: 303/843-9094

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BRENNAN ENVIRONMENTAL, INC.
Environmental Consulting Services

T. 973.781.1801
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8 Great Meadow Lane / Unit D
East Hanover, NJ 07936-1703

November 13, 2001

Marty Judge, Esq.
Drinker Biddle & Shanley LLP
105 College Road East
PO Box 627
Princeton, NJ 08542

Re: Tidewater Baling
26 Saint James Street
Newark, NJ
BEI Job No. 99186

Dear Mr. Judge:

The purpose of this letter is to provide you with Brennan Environmental Inc.'s (BEI) evaluation of remediation of the soil contamination at above referenced site with engineering and institutional controls also known as a "Restricted Use Remedial Action" pursuant to the NJDEP's Technical Requirements for Site Remediation (TRSR) N.J.A.C. 7:26E-1.8, in lieu of disposal.

It is BEI's understanding that the NJDEP's May 17, 1995 approval correspondence of the 1995 Remedial Action Work Plan (RAWP), prepared by Environmental Waste Management Associates (EWMA), is the most recent NJDEP correspondence that provides guidance on the cleanup of this site. It is also BEI's understanding that the NJDEP identified this correspondence in the February 15, 2001 meeting at the NJDEP as the document to refer to for the continued remediation of the subject property. According to the EWMA RAWP, the Non-Residential Direct Contact Cleanup Criteria (NDCC) were proposed to be the cleanup standard for soil since the Residential Direct Contact Cleanup Criteria were estimated to not be economically feasible. The NJDEP acknowledged that the cost to remediate the subject property to the more stringent Residential Direct Contact Criteria would be "prohibitive," and conditionally accepted use of the NDCC in the NJDEP's May 17, 1995 RAWP approval correspondence.

To understand EWMA's motivation for proposing excavation and disposal of the impacted areas of the site in lieu of a restricted use remediation standard, one must understand the regulations at the time that the RAWP was prepared. The applicable guidance in 1995 was the TRSR that was effective July 1, 1993. The 1993 TRSR emphasized the NJDEP's preference for permanent remedies in lieu of non-permanent remedies. Permanent remedies encouraged transformation of

the contaminants to a level below the residential cleanup criteria. Since NJDEP required a permanent remedy, EWMA was constrained to provide a remedy that would achieve the following:

- Remediate Total Petroleum Hydrocarbons (TPHC) to below 10,000 ppm,
- Remediate priority pollutant metals to the non-residential standard, and
- PCBs were not present above applied remediation standards but post-excavation soil sampling for PCBs was proposed.

EWMA provided a Remedial Alternative Analysis as part of the RAWP which confirmed that and on-site transformation of the contamination was not feasible and that an off-site disposal remedy was the only feasible way to achieve a permanent remedy for the site. NJDEP subsequently approved the offsite disposal remedy. As part of that approval, NJDEP did allow for remediation to the non-residential standard and management with institutional and engineering controls.

In 1997 NJDEP revised the TRSR. The TRSR were revised in response to Senate Bill S1070 known as the Industrial Site Recovery Act. S1070 established statutory requirements regarding the remediation of contaminated sites and directed the Department to establish four main procedures. Of those four main procedures the two applicable to this case are as follows:

- A procedure to establish criteria to demonstrate the cost of permanent remedies are unreasonable rather than just a preference for permanent remedies
- A procedure to define how the Department would evaluate non-residential standards.

NJDEP responded by revising the TRSR to provide for "Restricted Use Remedial Action" and "Limited Restricted Use Remedial Action". Also rather than a "preference for a permanent remedy," NJDEP provided a flow chart to be used in the decision making of a permanent vs. non-permanent remedial action. That flow chart is contained as an appendix to this report. The flow chart provides for a cost comparison decision tree of permanent vs. non-permanent remedies.

As indicated in that flow chart, the lower the cost of the selected non-permanent remedy. Based upon that cost analysis, Tidewater estimated to be \$240,000 in the 1995 RAWP non-permanent remedy (engineering controls) estimated to be \$112,000. Therefore, based on the cost analysis, Remedial Action should be allowed as long as the cost is less than the cost of the permanent remedy. It should be noted here that the TRSR were revised and removed the flow chart as part of the decision making process for permanent vs. non-permanent remedies.

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The most current TRSR require only that the selected remedy demonstrate the following:

1. The ability of the remedial action to protect the public health and safety and the environment.
2. The implementability of the proposed remedial action.
3. The consistency of the proposed remedial action with other applicable Federal, State and local laws and regulations, including, without limitation, the provisions of the Pinelands Protection Act, P.L.1979, c.111 (N.J.A.C. 13:18A-1 et seq.), any rules and regulations promulgated pursuant thereto; and the provisions of section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711.
4. The potential impacts of the proposed remedial action on the local community.
5. The potential for the selected action to cause natural resource injury.

The Restricted Use Remedial Action now proposed by BEI would meet all of these criteria.

BEI proposes application of the most current NJDEP guidance for the remediation of this site as directed by S1070 and the TRSR. BEI proposes a Restricted Use Remedial Action to include engineering and institutional controls and that access to the site be restricted in accordance with the May 17, 1995 NJDEP correspondence and S1070. Instead of off-site disposal of soils, the proposed remedy would now leave the soils in place with implementation of engineering and institutional controls to function as the control mechanisms. There is no good technical reason why a remediation to occur at this time should be required to adhere to 1995 standards that are no longer in effect.

The subject property is an ideal location for a Restricted Use Remedial Action. Specifically, ground water sampling results have never indicated the presence of impacts due to site usage; the site is underlain by a cobblestone barrier, which appears to have prevented surface spills from seeping deeper than a few feet from site grade; and the site is located in a revitalized neighborhood that is rebounding with new construction. Redevelopment of the subject property, which would be accelerated by the approval of this cleanup, would greatly improve the character of this neighborhood.

Finally, during a meeting with the NJDEP on February 15, 2001, the NJDEP indicated that the remedy now proposed by BEI for Tidewater Baling would be approved if proposed by a contract purchaser for the site. Although that contract later fell through for unrelated reasons, BEI is unaware of any technical reasons why a remedy suitable for a purchaser of the property would not also be suitable for the seller.

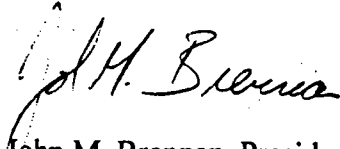


Tidewater Baling
26 Saint James Street
Newark, NJ
BEI Job no. 99186

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If you have any questions concerning this matter, please call me at the above number.

Sincerely,



John M. Brennan, President
Brennan Environmental Inc.

Cc: Alan Shapiro, Tidewater Baling
Richard Levao, Esq., Drinker Biddle & Shanley, LLP

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